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**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

VIVIAN FIORI ARIZA, ROGGIE  
TRUJILLO, PAMELA NEWPORT,  
ROBERT DEAN, and RAUL REYES, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

DELL INC., a corporation; BANCTEC, INC.,  
a corporation; WORLDWIDE  
TECHSERVICES, LLC, f/k/a  
QUALXSERV, LLC, an entity; DELL  
CATALOG SALES, L.P., an entity; DELL  
PRODUCTS, L.P., an entity; DELL  
MARKETING L.P., an entity; DELL  
MARKETING L.P., LLC, an entity; DELL  
MARKETING G.P., LLC, an entity; DELL  
USA, L.P., an entity; and DOES 1 through  
10,

Defendants.

**Case No. C09 01518 JW**

**[PROPOSED] CONDITIONAL THIRD  
AMENDED COMPLAINT**

**DEMAND FOR JURY TRIAL**

**CLASS ACTION**

Assigned to the Honorable James Ware

Action filed on April 7, 2009

1 Plaintiffs Vivian Fiori Ariza, Roggie Trujillo, Pamela Newport, Robert Dean, and Raul  
2 Reyes (collectively, "Plaintiffs"), on behalf of themselves and all other similarly situated persons  
3 in the states of California and Arizona, allege the following upon information and belief based  
4 upon personal knowledge:

#### 5 **NATURE OF THE CASE**

6 1. This suit concerns Defendants Dell Inc.; Banctec, Inc.; Worldwide TechServices,  
7 LLC; Dell Catalog Sales, L.P.; Dell Products, L.P.; Dell Marketing, L.P.; Dell Marketing L.P.,  
8 LLC; Dell Marketing G.P., LLC; and Dell USA, L.P.'s (hereafter "Defendants") deceptive  
9 business practices with regard to Defendants' sale of onsite service contracts for Dell notebook  
10 and desktop computers.

11 2. Plaintiffs allege that Defendants secretly charge customers for onsite service  
12 contracts for the first year after they purchase their Dell computers. Because the hidden charges  
13 are never disclosed – except in Defendants' internal invoicing which is never shown to the  
14 customer – customers are completely unaware they have paid for an onsite service contract they  
15 never knew they were purchasing, let alone consented to buying.

16 3. Plaintiffs also allege that Defendants deceptively advertised and represented that  
17 they would provide "next business day" at-home computer repair service under their onsite  
18 service contracts, but did not, as a matter of policy, actually provide onsite service on the next  
19 business day after customers initially called Dell to report their computer problems.

20 4. Class action treatment is appropriate as this matter involves a scheme to  
21 deliberately cheat large numbers of consumers out of individually small sums of money through  
22 a uniform course of conduct involving standardized business practices, common material  
23 omissions and misrepresentations, and substantially identical pre-preprinted form  
24 documentation.

#### 25 **JURISDICTION**

26 5. This Court has subject matter jurisdiction under the Class Action Fairness Act of  
27 2005, 28 U.S.C. § 1332(d) ("CAFA"). Plaintiffs and members of the proposed class are citizens  
28 of California and Arizona, whereas Defendants are incorporated and have principal places of

1 business in Texas, Delaware or Massachusetts. As such, all Plaintiffs and class members are  
2 citizens of states different from all Defendants. The aggregate amount in controversy exceeds  
3 \$5,000,000. Furthermore, Defendants have purposefully availed themselves of the benefits and  
4 protections of this District and/or have had sufficient contacts with this District such that  
5 maintenance of the action in this locale is consistent with traditional notions of fair play and  
6 substantial justice.

#### 7 **INTRA-DISTRICT ASSIGNMENT**

8 6. Pursuant to Civil Local Rule 3-2(c), this case is assigned to the San Jose Division  
9 of this Court, as San Benito County was the residence of Plaintiffs Ariza and Trujillo at the time  
10 of filing and where a substantial part of the events or omissions which give rise to Plaintiffs'  
11 claims occurred.

#### 12 **PARTIES**

13 7. Plaintiff Roggie Trujillo was a resident of San Benito County, California at the  
14 time she purchased the goods and services at issue. She has been a resident of California at all  
15 relevant times. Plaintiff Trujillo asserts claims against all Defendants.

16 8. Plaintiff Vivian Fiori Ariza was a resident of San Benito County, California at the  
17 time she purchased the goods and services at issue. She has been a resident of California at all  
18 relevant times. Plaintiff Ariza asserts claims against all Defendants.

19 9. Plaintiff Pamela Newport was a resident of Arizona at the time she purchased the  
20 goods and services at issue. She has been a resident of Arizona at all relevant times. Plaintiff  
21 Newport asserts claims against only the Dell Defendants and Defendant Banctec.

22 10. Plaintiff Robert Dean was a resident of San Francisco County, California at the  
23 time he purchased the goods and services at issue. He has been a resident of California at all  
24 relevant times. Plaintiff Dean asserts claims against only the Dell Defendants.

25 11. Plaintiff Raul Reyes was a resident of Los Angeles County, California at the time  
26 he purchased the goods and services at issue. He has been a resident of California at all relevant  
27 times. Plaintiff Reyes asserts claims against only the Dell Defendants.

28 12. Plaintiffs are informed and believe and thereon allege that defendant Dell Inc. is a

1 corporation organized under the laws of the State of Delaware, with its principal place of  
2 business in Round Rock, Texas, and was formerly known as “Dell Computer Corporation.” Dell  
3 Inc. is engaged in the business of manufacturing, marketing, selling, retailing, maintaining,  
4 repairing, servicing, and providing support for computer systems and computer products. Dell  
5 Inc. is also engaged in the business of making, marketing, selling, and retailing service contracts  
6 for the repair of Dell computers, including the ones involved in this case. In addition, Dell Inc.  
7 is engaged in the business of repairing, servicing, and providing support for onsite warranty  
8 repair services to purchasers of Dell computer systems, including the onsite warranty repair  
9 services at issue in this case.

10       13.     Plaintiffs are informed and believe and thereon allege that defendants Dell  
11 Catalog Sales, L.P.; Dell Products, L.P.; Dell Marketing, L.P.; Dell Marketing L.P., LLC; Dell  
12 Marketing G.P., LLC; and Dell USA, L.P. are wholly-owned subsidiaries and/or affiliates  
13 through which Dell Inc. conducts its business. Dell Inc. and the foregoing Dell defendants have  
14 been or are the principals, agents, employees, representatives, partners, joint venturers and/or  
15 co-conspirators of each other and, in such capacity or capacities, participated in the acts or  
16 conduct alleged herein and incurred liability therefor. Further, Plaintiffs are informed and  
17 believe and thereon allege that Defendants Dell Catalog Sales, L.P.; Dell Products, L.P.; Dell  
18 Marketing, L.P.; Dell Marketing L.P., LLC; Dell Marketing G.P., LLC; and Dell USA, L.P. are,  
19 and at all times herein mentioned were, the alter egos of Defendant Dell Inc., and there exists,  
20 and at all times herein mentioned has existed, a unity of interest and ownership between such  
21 Dell defendants and Dell Inc. such that any separateness between them has ceased to exist, in  
22 that Defendant Dell Inc. completely controls, dominates, manages, and operates Dell Catalog  
23 Sales, L.P.; Dell Products, L.P.; Dell Marketing, L.P.; Dell Marketing L.P., LLC; Dell Marketing  
24 G.P., LLC; and Dell USA, L.P. to the detriment of Plaintiffs and class members. Adherence to  
25 the fiction of the existence of Dell Catalog Sales, L.P.; Dell Products, L.P.; Dell Marketing, L.P.;  
26 Dell Marketing L.P., LLC; Dell Marketing G.P., LLC; and Dell USA, L.P. as entities separate  
27 and distinct from Dell Inc. would permit an abuse of corporate privileges and would sanction a  
28 fraud and promote injustice.

1           14. Collectively, all of the Dell defendants will hereafter be referred to as “Dell” or  
2 “Dell Defendants.” Thus, “Dell” or “Dell Defendants” includes Dell Inc.; Dell Catalog Sales,  
3 L.P.; Dell Products, L.P.; Dell Marketing, L.P.; Dell Marketing L.P., LLC; Dell Marketing G.P.,  
4 LLC; and Dell USA, L.P.

5           15. Plaintiffs are informed and believe and thereon allege that defendant Banctec, Inc.  
6 (“Banctec”) is a corporation organized under the laws of the State of Delaware with its principal  
7 place of business located in Irving, Texas. Banctec is engaged in the making, marketing, selling,  
8 and retailing of service contracts for the repair of Dell computers. Banctec is also engaged in the  
9 business of repairing, servicing, and providing support for onsite warranty repair services to  
10 purchasers of Dell computer systems, including the onsite warranty repair services at issue in  
11 this case. Further, Banctec, along with Dell and defendant Worldwide TechServices, LLC, sells  
12 service contracts to California and Arizona residents for the repair of Dell computers, including  
13 the ones involved in this case, and Banctec provides onsite repair services to Dell customers in  
14 California and Arizona through its employees who are located here.

15           16. Plaintiffs are informed and believe and thereon allege that defendant Worldwide  
16 TechServices, LLC, f/k/a QualxServ, LLC (“Worldwide TechServices”) is a limited liability  
17 company organized under the laws of the State of Delaware with its principal place of business  
18 located in Tewksbury, Massachusetts. Worldwide TechServices is engaged in the making,  
19 marketing, selling, and retailing of service contracts for the repair of Dell computers.  
20 Worldwide TechServices is also engaged in the business of repairing, servicing, and providing  
21 support for onsite warranty repair services to purchasers of Dell computer systems, including the  
22 onsite warranty repair services at issue in this case. Further, Worldwide TechServices, along  
23 with Dell and Banctec, sells service contracts to California and Arizona residents for the repair  
24 of Dell computers, including the ones involved in this case, and Worldwide TechServices  
25 provides onsite repair services to Dell customers in California and Arizona through its  
26 employees who are located here.

27           17. Plaintiffs are informed and believe and thereon allege that with respect to the  
28 claims asserted herein, each of the Defendants has been or is the principal, agent, employee,

1 representative, partner, joint venturer and/or co-conspirator of each of the other Defendants and  
2 in such capacity or capacities participated in the acts or conduct alleged herein and incurred  
3 liability therefor. Further, at all times relevant hereto, each of the Defendants has been or is the  
4 agent, partner and/or joint venturer of each other Defendant with respect to the making,  
5 marketing, selling, maintaining, repairing, servicing, and providing warranty services, parts and  
6 labor to purchasers of Dell computer systems, including the onsite warranty repair services at  
7 issue. Each Defendant derived, accepted and retained monetary profits and benefits from the  
8 sale of the service contracts in issue. Further, each of the Defendants acted for and on behalf of  
9 each other Defendant with respect to the service contracts, with actual and apparent authority to  
10 act, and did so within the course and scope of their agency, partnership, joint venture and/or  
11 authority. With regard to the specific warranties, representations and agreements alleged herein,  
12 each was made with the knowledge, consent, authorization, ratification and approval of each of  
13 the Defendants.

14 18. More specifically, Bancotec and Worldwide TechServices participated in and  
15 profited from all of the business practices and policies alleged herein with full knowledge of the  
16 facts, and were fully aware of the material omissions and business practices and policies in issue  
17 which were committed on their behalf as well as on behalf of Dell.

18 19. The true names and capacities, whether individual, corporate, associate or  
19 otherwise, of Defendant Does 1-10, inclusive, are unknown to Plaintiffs, who therefore sue such  
20 Defendants by such fictitious names. Plaintiffs will amend this Complaint to show such  
21 Defendants' true names or capacities when the same have been ascertained. Plaintiffs are  
22 informed and believe and thereon allege that each of said fictitious named Defendants is  
23 responsible in some manner for the occurrences herein alleged.

24 **California Regulation**

25 20. The service contracts at issue that were sold in California to California residents  
26 for use in California on Dell computers located here, as well as any onsite repair services  
27 performed thereunder, are statutorily regulated by the State of California through Business and  
28 Professions Code §§ 9800, *et seq.*, the Song-Beverly Act (Civil Code §§ 1790, *et seq.*), and Title

16 of the California Code of Regulations, Division 27. Further, Defendants, being sellers of the service contracts as well as providers of repair services, are regulated in California by the Bureau of Electronic and Appliance Repair as “service dealers” pursuant to § 9801(f) of the California Business and Professions Code, as “service contract sellers” or “sellers” pursuant to § 9855(c) of that Code, as well as “service contractors” pursuant to § 9855(e). Plaintiffs are informed and believe and thereon allege that as sellers of service contracts and providers of repair services in California, Defendants are required to be registered with the State of California, and that Defendants are either presently registered or have been in the past.

### **GENERAL ALLEGATIONS**

#### **A. Defendants’ Secret Charge for First-Year Onsite Service Contracts**

##### **Defendants’ Common Practices**

21. Dell sells desktop and laptop computers directly to consumers through its website as well as over the telephone through its sales representatives. Independent and separate from its computers, Dell, on behalf of itself and all Defendants, also sells and markets onsite warranty repair services via service contracts to Dell computer customers. Dell broadly advertises both its computers and service contracts throughout California and Arizona to consumers in those states through various media, including Dell’s website, mail order catalogs, newspapers, television and the Internet.

22. Dell, on behalf of itself and all Defendants, advertises and represents that warranty repairs for Dell computers are made onsite for the first year after purchase. As a matter of business policy and practice common to all their customers, including Plaintiffs and class members, Defendants secretly charge Dell customers for this first year onsite repair service without the customer’s knowledge or informed consent. This charge is hidden from the customer and never disclosed by Defendants either prior to, at the time of, or after the sale of a Dell computer.

23. Further, Defendants’ standard policy is that the service contracts for the first year after purchase are optional and do not have to be bought by the customer. However, in furtherance of their scheme to deceive, Defendants never disclose this standard policy or option

1 to the customer prior to, at the time of, or after the sale of a Dell computer. As a result, the  
2 customers are completely unaware they are being charged for the first year onsite repair service,  
3 or even that they had the option not to be charged in the first place.

4 24. Also in furtherance of the scheme, Defendants memorialize every computer sale  
5 in writing by way of a standard Invoice or Acknowledgment (see examples attached as Exhibits  
6 1-3). These Invoices are sent to Dell customers after they purchase a computer as a matter of  
7 Defendants' standard business practice. The Invoices do not list a charge for the first year  
8 service contract, nor do they disclose that the customer has been charged for a first year onsite  
9 service contract. In contrast, as a matter of Defendants' standard business practice, the charge  
10 for the service contract is clearly and conspicuously listed in Defendants' internal invoicing that  
11 is never shown to the customer.

12 25. Similarly, Defendants, as a matter of standard business practice, make available to  
13 Dell customers a copy of their standard service contract that, again, fails to disclose that there  
14 was any charge for the service contract or for the onsite repair service.

15 26. That there is a charge for the first year onsite service contract and that such  
16 charge is optional are facts within the exclusive knowledge of Defendants which Defendants  
17 suppress and conceal from customers.

18 27. Aiding in their scheme is the fact that Defendants do disclose that the customer  
19 has the option to buy extended service contracts for additional years of onsite warranty repair  
20 service beyond the first year, and the fact that Defendants do itemize and specify the charges for  
21 the additional years of onsite service or extended service contracts. The end result of  
22 Defendants' partial representations of some material facts and suppression of others is that  
23 Defendants create the false impression, and mislead their customers into believing, that there is  
24 no charge for their first year onsite warranty repair service.

25 28. Given the foregoing practices and policies, buyers of Dell computers, as  
26 reasonable consumers, reasonably believe there is no charge for first year onsite warranty repair  
27 service. As buyers and reasonable consumers, customers purchasing Dell computers would  
28 reasonably expect that if Defendants, as sellers, imposed a charge for the first year onsite repair



1 service, such a cost would be clearly and conspicuously disclosed to buyers before or at the time  
2 of sale. This is especially true given the fact that Defendants disclose that service contracts  
3 beyond the first year are optional and the fact that Defendants disclose the costs for service  
4 contracts beyond the first year to their customers.

5 29. In addition, as buyers and reasonable consumers, customers purchasing Dell  
6 computers would reasonably expect that if they had the option and choice whether to purchase  
7 onsite repair service for the first year, Defendants, as sellers, would clearly and conspicuously  
8 disclose this option to them before or at the time of sale. Taken together, customers purchasing  
9 Dell computers would reasonably expect that if a charge existed for the first year onsite repair  
10 service, Defendants would clearly and conspicuously disclose to them the full details of the  
11 charge, as well as disclose to them their option and choice whether to incur the extra charge or  
12 not.

#### 13 **Uniform Omissions and Standard Documentation**

14 30. Defendants' policy and standard business practices as alleged herein are common  
15 to all Dell customers. Further, Defendants made the same uniform omissions and lack of  
16 disclosures to all Dell customers, irrespective of whether the customers purchased their  
17 computers on Dell's website or over the telephone from Dell's sales representatives.  
18 Defendants' uniform omissions were material in inducing consumers to incur, without their  
19 knowledge or consent, charges for their first year onsite repair service through the unintentional  
20 purchase of a service contract.

21 31. In addition, Defendants provided Dell customers with the same or substantially  
22 the same uniform standard documentation, including substantially identical form invoices and  
23 pre-printed form service contracts. Defendants drafted all sales documentation, and are in a  
24 superior bargaining position from their customers. Customers have no input or ability to  
25 negotiate any of the terms of these "take it or leave it" form adhesion documents. Further,  
26 Defendants unilaterally insert unfair terms in their form documents, such as class action bans and  
27 Texas choice of law provisions, for the distinct purpose of trying to immunize themselves from  
28 any material liability so that they will be free to engage in their wrongful conduct to substantially

1 increase profits without any real consequences.

2 **Defendants' Motives**

3 32. Plaintiffs are informed and believe and thereon allege that the reason Defendants  
4 engage in the deceptive acts alleged herein is to allow them to substantially increase sales of Dell  
5 computers and profits. Plaintiffs are informed and believe and thereon allege that, since Dell has  
6 no retail outlets, Defendants believe that if they did not provide their customers with onsite  
7 repair service for the first year after purchase, they would be at a substantial competitive  
8 disadvantage to big-box store retailers such as Best Buy which offer their customers the  
9 convenience of returning a broken computer to any store for warranty service. Defendants  
10 attempt to counteract this advantage by offering to come to a customer's home to fix their  
11 computer if it is broken but, to maintain high profits, they force the customer to secretly pay for  
12 this service option. Without the onsite repair service, Dell customers would be forced to  
13 package their computers and mail them to a Dell repair facility for warranty repair.

14 33. Plaintiffs are also informed and believe and thereon allege that Defendants  
15 believe that if they did not conceal the charge for this onsite service, Defendants fear that  
16 potential customers would find it more attractive to purchase their computers at a store where  
17 warranty repair options are both free and more convenient, rather than pay a premium price for  
18 Defendants' promise to fix their Dell computers onsite at some time in the future. Plaintiffs are  
19 also informed and believe and thereon allege that sales of service contracts are a high profit  
20 margin business for Defendants, which provides them further incentive for the scheme.

21 **Duty to Disclose**

22 34. Defendants had a duty to disclose based upon their exclusive knowledge of the  
23 material facts alleged above which were unknown to Dell customers, and which they could not  
24 reasonably discover; namely, that the first year onsite service contracts were optional and that  
25 the Defendants secretly charged their customers for the cost of the first year service contracts.  
26 Defendants failed to disclose these material facts to their customers, and instead concealed and  
27 suppressed such material facts as a matter of business policy and practice. Further, Defendants'  
28 act in disclosing and itemizing the cost of their onsite service contracts beyond the first year as

well as disclosing that these onsite contracts beyond the first year were optional while, at the same time, concealing and suppressing these same material facts for the first year onsite service contracts, created a false impression in their customers that there were no optional charges associated with the first year onsite service contracts. Defendants' acts in making a partial representation of material facts while simultaneously suppressing other material facts created a duty to disclose all material facts, including the suppressed and concealed ones.

35. Besides the foregoing, Defendants were also required under the consumer protection statutes alleged herein to disclose that their first year onsite service contracts were optional, and that they charged their customers for them. These statutory requirements are detailed more fully below but include the following: (1) the Song-Beverly Consumer Warranty Act, California Civil Code §§ 1790, *et seq.*, which requires all material terms, conditions and exclusions of the service contracts to be clearly and conspicuously disclosed in simple and readily understood language; (2) the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.*, which requires that a seller of goods and services such as those at issue here, may not represent that goods or services have characteristics or benefits which they do not have, may not advertise goods or services with an intent not to sell them as advertised or represent that a transaction confers or involves rights or obligations which it does not have, and may not represent a repair service is needed when it is not; and (3) the Unfair Competition Law, California Business & Professions Code §§ 17200, *et seq.*, the False Advertising Law, California Business & Professions Code §§ 17500, *et seq.*, and the Arizona Consumer Fraud Act, Arizona Revised Statutes §§ 44-1521, *et seq.*, which make actionable any business act, practice or advertising which is likely to mislead or deceive the public.

36. In engaging in the acts and conduct alleged herein, Defendants violated the various duties to disclose they owed to Dell customers.

**B. Defendants' Misrepresentations Regarding "Next Business Day" Service**

37. As set forth above, because Dell has no retail outlets, Defendants also sell and market onsite warranty repair service contracts in order to counteract the substantial competitive disadvantage posed by big-box store retailers that offer customers the convenience of returning a

1 broken computer to any store for warranty service. One aspect of these onsite service contracts  
2 that Defendants had broadly advertised and marketed in order make their business model of  
3 direct order sales palatable to the public is the customer's ability to receive next business day at-  
4 home service.

5 38. Defendants called this standard warranty "Next Business Day" and offered to  
6 come to customers' homes to repair their computers on the next business day after a computer  
7 problem arose. Defendants also aggressively sold and marketed extensions of these next  
8 business day onsite service contracts for an additional one to three years.

9 39. Defendants made representations regarding the next business day nature of their  
10 onsite service contracts in their written warranty and sales documentation, as well as on Dell's  
11 website and in its mail order catalogs. Additionally, Plaintiffs are informed and believe and  
12 thereon allege that Dell sales representatives underwent extensive training to learn the most  
13 effective sales techniques to sell these next business day onsite service contracts, and that Dell  
14 provided written scripts for its telephone salespeople to follow, directing them to highlight to  
15 customers the ability to have their computer fixed at home the next business day after it stops  
16 working.

17 40. Given the foregoing practices and policies, buyers of Dell computers, as  
18 reasonable consumers, reasonably believed that they would receive at-home repair service on  
19 their computers on the next business day after they called Dell to report a computer problem.

20 41. Despite their marketing practices, Defendants made no effort to actually provide  
21 next business day service. Plaintiffs are informed and believe that Defendants had no company  
22 policies pursuant to which onsite service would take place on the next business day after a  
23 customer's initial request for technical service to fix a broken computer. To the contrary, as a  
24 matter of policy, Defendants did not provide next business day service as the term "next business  
25 day" is commonly understood. Plaintiffs are informed and believe and thereon allege that  
26 Defendants' policy was to target not the date the customer actually called in with a problem, but  
27 rather, the date Dell decided, in its sole discretion, that onsite service should take place.

28 42. The result is that Dell customers who have received or purchased a "Next

Business Day” onsite service contract typically did not actually receive at-home computer service until weeks, or even months, after their initial calls to Dell for service.

### **PLAINTIFF-SPECIFIC ALLEGATIONS**

#### **A. Plaintiff Vivian Fiori Ariza**

43. Plaintiff Ariza’s claims are asserted against all Defendants.

44. On or around September 5, 2003, Plaintiff Vivian Fiori Ariza purchased a Dell computer for her personal, family and household use through Dell’s website, and did use the computer for her personal, family and household use. She selected the computer she wanted from among various different choices presented on the Dell website. According to the written representations and advertising Defendants made on the website, which Plaintiff Fiori read before making her computer purchase, warranty repairs for her computer would be made onsite for the first year after purchase.

45. Plaintiff Ariza was provided no option to delete or eliminate the first year onsite repair service. Further, Defendants made no disclosure on the website that there was any charge or cost associated with the first year onsite repair service. Nor was there any disclosure on the website giving Plaintiff the option of just purchasing the computer without the onsite repair service for a lesser price. In contrast, Defendants did disclose to Plaintiff Ariza through their website and advertising that she had the option to purchase, for a specified, itemized amount, additional years of onsite service beyond the first year.

46. Based on the foregoing, and as a reasonable consumer, Plaintiff Ariza reasonably concluded there was no charge for the first year onsite repair service. Plaintiff Ariza reasonably expected that if there was a charge for the first year onsite service, Defendants would clearly disclose this cost prior to or at the time of the sale. Further, Plaintiff Ariza reasonably expected that if there was a charge or cost associated with the onsite service for the first year of purchase, Defendants would have provided an option prior to or at the time of the sale for Plaintiff Ariza to purchase the computer without the onsite service. This is especially true given the fact that Defendants disclosed that service contracts for onsite warranty repair service beyond the first year were optional and the fact that Defendants disclosed and itemized the costs of such service

1 contracts beyond the first year.

2 47. Relying upon the foregoing lack of disclosures, and not knowing that there  
3 actually was a charge for the onsite service, Plaintiff Ariza made her purchase of the computer  
4 through Dell's website on or about September 5, 2003. She did this with a credit card payment  
5 that Defendants immediately accepted.

6 48. Defendants, pursuant to their standard business practice, sent Plaintiff Ariza a  
7 written Acknowledgment Invoice dated September 12, 2003 memorializing her purchase. (A  
8 true and correct redacted copy of the front of this Invoice is attached hereto as Exhibit 1.) The  
9 Invoice, pursuant to Defendants' standard business practice, did not list a price for the initial, or  
10 first year, onsite repair service, and did not indicate anywhere that she had been charged the  
11 price for a service contract. Further, and also pursuant to Defendants' established business  
12 practice, nowhere on the Invoice did Defendants disclose to Plaintiff Ariza that there was a  
13 charge for her first year onsite repair service or that Defendants had actually charged Plaintiff  
14 Ariza for the cost of a service contract. Nor did Defendants disclose to Plaintiff Ariza anywhere  
15 on the Invoice that she had the option to purchase the computer without incurring a charge for  
16 the onsite repair service and service contract.

17 49. Plaintiff Ariza is also informed and believes and thereon alleges that, pursuant to  
18 Defendants' standard business practice, Defendants made available to her a pre-printed form  
19 service contract for the onsite service. As with the Invoice, Plaintiff Ariza is informed and  
20 believes and thereon alleges that nowhere on the form did Defendants disclose there was any  
21 charge for the first year onsite service or that Plaintiff had the option not to have this onsite  
22 service for the first year after purchase.

23 50. Within the year before filing this action, Plaintiff Ariza discovered, as a result of  
24 an unrelated legal proceeding, that Defendants had secretly charged her for onsite warranty  
25 repair service during the first year after purchase through the undisclosed sale of a service  
26 contract to her. Defendants concealed and suppressed the true facts from Plaintiff Ariza and  
27 never disclosed them to her before or after her computer purchase took place. Plaintiff Ariza had  
28 no knowledge that she was charged for onsite service through a service contract, and never

1 agreed or consented to this charge.

2 51. If Defendants had disclosed the charge for the first year onsite repair service and  
3 service contract prior to or at the time of sale, Plaintiff Ariza would have been aware of it, would  
4 have acted differently, and would not have purchased the onsite service through the purchase of  
5 a service contract. Likewise, if Defendants had disclosed to her prior to or at the time of sale  
6 that the onsite service costs extra money and that she had the option not to purchase it, Plaintiff  
7 Ariza would have been aware of it, would have acted differently, and would have chosen the  
8 option not to have the onsite service and service contract for the first year.

9 **B. Plaintiff Roggie Trujillo**

10 52. Plaintiff Trujillo's claims are asserted against all Defendants.

11 53. On or around March 23, 2004, Plaintiff Ariza purchased through Dell's website  
12 another Dell computer, this time on behalf of her mother, Plaintiff Roggie Trujillo, for her  
13 mother's personal, family and household use in California. Plaintiff Trujillo delegated to her  
14 daughter, as her agent for purposes of buying the computer, full authority and discretion to buy  
15 the same type or substantially similar computer as her daughter had purchased the prior year.  
16 Plaintiff Trujillo wanted the computer for her personal, family and household use, and Plaintiff  
17 Trujillo did use the computer for her personal, family and household use. Prior to and at the time  
18 of the purchase of her mother's computer in March, 2004 ("the Trujillo computer"), neither  
19 Plaintiff Ariza nor Plaintiff Trujillo were aware that Defendants secretly charge customers for a  
20 first year service contract as part of the transaction. If they had known about the charge, they  
21 would have chosen not to purchase the service contract.

22 54. On behalf of her mother, Plaintiff Ariza selected the same type of computer she  
23 had previously purchased for herself from among the various choices presented on Dell's  
24 website. According to the written representations and advertising Defendants made on the  
25 website, which Plaintiff Ariza read before making the purchase of the Trujillo computer,  
26 warranty repairs for the computer would be made onsite for the first year after purchase.

27 55. In purchasing the Trujillo computer, Plaintiff Ariza was provided no option to  
28 delete or eliminate the first year onsite repair service. Further, Defendants made no disclosure



1 on the website that there was any charge or cost associated with the first year onsite repair  
2 service. Nor was there any disclosure on the website giving Plaintiffs Ariza and Trujillo the  
3 option of purchasing only the computer without the onsite repair service for a lesser price. In  
4 contrast, Defendants did disclose to Plaintiffs Ariza and Trujillo through their website and  
5 advertising that they had the option to purchase, for a specified, itemized amount, additional  
6 years of onsite service beyond the first year.

7 56. Based on the foregoing, and as a reasonable consumer, Plaintiff Ariza, on behalf  
8 of herself and her mother, reasonably concluded there was no charge for the first year of onsite  
9 repair service for the Trujillo computer. Plaintiffs Ariza and Trujillo reasonably expected that if  
10 there was a charge for the first year onsite service, Defendants would clearly disclose this cost  
11 prior to or at the time of the sale. Further, Plaintiffs Ariza and Trujillo reasonably expected that  
12 if there was a charge or cost associated with the onsite service for the first year of purchase,  
13 Defendants would provide an option prior to or at the time of the sale for Plaintiffs to purchase  
14 the computer without the onsite service. This is especially true given the fact that Defendants  
15 disclosed that service contracts for onsite warranty repair service beyond the first year were  
16 optional and the fact that Defendants disclosed and itemized the costs of such service contracts  
17 beyond the first year.

18 57. Relying upon the foregoing lack of disclosures, and not knowing that there  
19 actually was a charge for the onsite service, Plaintiff Ariza, on behalf of her mother, purchased  
20 the Trujillo computer through Dell's website on or about March 23, 2004, and paid for it with  
21 Plaintiff Ariza's credit card. Defendants accepted payment immediately. Plaintiff Ariza was  
22 subsequently reimbursed by her mother for the cost of the Trujillo computer.

23 58. Defendants, pursuant to their standard business practice, sent a written  
24 Acknowledgment Invoice dated April 9, 2004 memorializing the purchase of Plaintiff Trujillo's  
25 computer. (A true and correct redacted copy of the front of the Invoice is attached hereto as  
26 Exhibit 2.) The Invoice, pursuant to Defendants' standard business practice, did not list a price  
27 for the initial, or first year, onsite repair service, and did not indicate anywhere that the customer  
28 had been charged the price for a service contract. Further, and also pursuant to Defendants'



1 established business practice, nowhere on the Invoice did Defendants disclose that there was a  
2 charge for her first year onsite repair service or that Defendants had actually charged for the cost  
3 of a service contract. Nor did Defendants disclose anywhere on the Invoice that the customer  
4 had the option to purchase the computer without incurring a charge for the onsite repair service  
5 and service contract.

6 59. Plaintiffs Ariza and Trujillo are also informed and believe and thereon allege that,  
7 pursuant to Defendants' standard business practice, Defendants made available a pre-printed  
8 form service contract for the onsite service. As with the Invoice, Plaintiffs Ariza and Trujillo are  
9 informed and believe and thereon allege that nowhere on the form did Defendants disclose there  
10 was any charge for the first year onsite service or that the customer had the option not to have  
11 this onsite service and save herself the cost of the service.

12 60. Within the year before filing this action, Plaintiff Trujillo, as did Plaintiff Ariza,  
13 discovered, as a result of an unrelated legal proceeding, that Defendants had secretly charged for  
14 the first year onsite warranty repair service for the Trujillo computer. Defendants concealed and  
15 suppressed the true facts from Plaintiffs Ariza and Trujillo and never disclosed them to Plaintiffs  
16 before or after the Trujillo computer purchase took place. Neither Plaintiff Trujillo nor Plaintiff  
17 Ariza had any knowledge that they were being charged for onsite service for the Trujillo  
18 computer through a service contract, and neither Plaintiff ever agreed or consented to this  
19 charge.

20 61. If Defendants had disclosed to Plaintiffs Ariza and Trujillo prior to or at the time  
21 of sale that there was a charge for the first year onsite repair service and service contract,  
22 Plaintiffs would have been aware of it, would have acted differently, and would not have  
23 purchased the onsite service. Likewise, if Defendants had disclosed to Plaintiffs Ariza and  
24 Trujillo prior to or at the time of the sale of the Trujillo computer that the onsite service costs  
25 extra money and that they had the option not to purchase it, Plaintiffs would have been aware of  
26 it, would have acted differently, and would have chosen the option not to have the onsite service  
27 and service contract for the first year.

28 **C. Plaintiff Pamela Newport**

1           62. Plaintiff Newport's claims are asserted against only the Dell Defendants and  
2 Defendant BancTec.

3           63. On or about August 31, 2000, Plaintiff Newport purchased her Dell computer  
4 from a Dell sales representative over the telephone. Plaintiff Newport purchased her computer  
5 as a consumer for personal, family, or household use. Pursuant to Defendants' established  
6 business practice, the Dell sales representative represented on behalf of Dell and the other  
7 Defendants that the first year onsite service came standard with her computer for no additional  
8 consideration, whereas an extension of this standard service contract for two years cost  
9 approximately an additional \$120. The sales representative, pursuant to Defendants' standard  
10 business practices, never disclosed to Plaintiff Newport that she would actually be charged for  
11 the first year onsite service, and that she had the option of not having first year onsite service,  
12 which could have lowered the total purchase price of her computer.

13           64. Further, within sixty days prior to her telephone conversation with the Dell  
14 representative, Plaintiff Newport had visited Dell's website and saw substantially similar  
15 representations and omissions in writing regarding the onsite service contracts, including that the  
16 first year onsite service came standard with her computer for no additional consideration. In  
17 addition, the website did not contain any clear and conspicuous disclosure that the first year of  
18 onsite service was actually an additional cost added on to the purchase price of a computer, or  
19 that customers had the option to purchase the computer for less money if they chose not to have  
20 this onsite service during the first year of the warranty period.

21           65. Relying upon the foregoing alleged representations (and not knowing about the  
22 material omissions alleged above) made by Dell's sales representative and on Dell's website,  
23 Plaintiff Newport, on or about August 31, 2000, orally accepted Dell's offer to sell the computer  
24 and initial year of the onsite service to her. This acceptance was communicated to the Dell sales  
25 representative during her telephone call on or about August 31, 2000. The Dell representative,  
26 pursuant to Dell's standard business practice, then required Plaintiff Newport to pay for the  
27 purchase during the call, which she did with a credit card.

28           66. Defendants, pursuant to their established business practice, sent Plaintiff Newport

1 a written Acknowledgment Invoice dated September 1, 2000 memorializing her purchase. (A  
2 true and correct redacted copy of the Invoice is attached hereto as Exhibit 3.) The Invoice,  
3 pursuant to Defendants' standard business practice, did not list a price for the initial, or first year,  
4 onsite service contract; rather, it only listed a lump sum. Further, and also pursuant to  
5 Defendants' established business practice, nowhere on the Invoice did Defendants disclose to  
6 Plaintiff Newport that there was a charge for her "standard" first year onsite contract or that  
7 Defendants had actually charged Plaintiff for it. Nor did Defendants disclose to Plaintiff  
8 Newport on the Invoice that she had the option to purchase the computer for less money if she  
9 chose not to have this onsite service contract during the first year of the warranty period.

10 67. Plaintiff Newport discovered sometime in the Fall of 2007 through an unrelated  
11 legal proceeding that Defendants had secretly charged her for the right to have onsite service and  
12 parts during the first year of the warranty period. This hidden charge was never disclosed to her,  
13 nor did Defendants disclose to her that she had the option to purchase the computer for less  
14 money without the onsite service for the first year. Plaintiff Newport also discovered at or  
15 around the same time that Defendants maintain separate internal invoices that the customer  
16 never sees or even knows about, which list separately the price of each element of a customer's  
17 purchase, including the additional undisclosed charge of the first year onsite service contract.

18 68. Also pursuant to her August 31, 2000 Dell computer purchase, Dell, on behalf of  
19 itself and the Defendants, represented to Plaintiff that she was entitled to next business day  
20 onsite warranty repair service with a live technician for the first year of her service contract, as  
21 well as the right to have warranty replacement parts sent to her the next business day.  
22 Defendants also sold Plaintiff a two year extension of this next business day onsite service  
23 contract, which included the right to have next business day onsite service for an additional two  
24 years.

25 69. Beginning in or around June, 2003, and within the applicable warranty period,  
26 Plaintiff notified Defendants orally and in writing of her need for next business day onsite  
27 warranty repair service to fix her computer. Defendants continued dealing with Plaintiff on her  
28 warranty problems through at least November, 2003, but failed to provide next business day

1 onsite warranty repair service, despite Plaintiff's repeated efforts to obtain such service.

2 **D. Plaintiff Robert Dean**

3 70. Plaintiff Dean's claims are asserted against only the Dell Defendants.

4 71. In or around October of 2005, Plaintiff Robert Dean purchased for personal,  
5 family or household purposes a Dell computer with an onsite service contract that included the  
6 right to have next business day onsite warranty repair service.

7 72. Plaintiff Dean first observed Dell's representations that the computer he intended  
8 to purchase came with next business day onsite repair service at a Dell kiosk at a local shopping  
9 center in San Francisco. The Dell representative at the kiosk confirmed to Plaintiff Dean that the  
10 computer came with next business day onsite warranty repair service. Plaintiff Dean then  
11 observed Dell's written representation that the computer came with next business day onsite  
12 service on Dell's website.

13 73. In reliance upon these representations that onsite service would be provided on  
14 the next business day, Plaintiff Dean called Dell to order his computer. He discussed his order  
15 with the Dell salesperson over the telephone, and the salesperson likewise confirmed that the  
16 computer came with next business day onsite service. Relying on the representations made to  
17 him, Dean placed his order for the computer.

18 74. Plaintiff Dean received delivery of this computer in late October of 2005, but it  
19 was missing a part. He called Dell immediately upon receipt of the computer, and Dell informed  
20 him that it should have been sent with the missing part installed. Despite numerous  
21 conversations with Defendants' technical support team and written correspondence regarding  
22 this issue, the part was not installed by Defendants until late December of 2005, approximately 2  
23 months after Plaintiff Dean's initial call to Dell for computer repair service.

24 75. Plaintiff Dean believes that he purchased another Dell computer for his personal  
25 and household use around 2001 or 2002. Plaintiff recalls receiving a next business day service  
26 contract with the computer, and receiving such onsite service, but not on the next business day  
27 after his call for service. Like his 2005 computer, he purchased this computer after reading  
28 about it on Dell's website. On the website, he observed and relied upon Dell's representation

1 that service would be provided on the next business day. He called Dell to place the order and  
 2 the Dell salesperson also informed him that the computer came with next business day service.  
 3 Plaintiff believes that the salesperson also convinced him to buy an extended warranty or onsite  
 4 service contract for additional years. Plaintiff Dean recalls that he required onsite service for a  
 5 problem with his hard drive or motherboard, and that he received onsite service, but not on the  
 6 next business day after he called for help.

7 **E. Plaintiff Raul Reyes**

8 76. Plaintiff Reyes' claims are asserted against only the Dell Defendants.

9 77. In or around October of 2007, Plaintiff Reyes purchased a Dell computer for his  
 10 personal, family, or household use through Dell's website. While selecting the various  
 11 components of his computer purchase on Dell's website, he read that Defendants offered a next  
 12 business day onsite service contract for his computer. In order to clarify the terms of the next  
 13 business day onsite service contract he was interested in purchasing, while he was reviewing the  
 14 website, he called Dell and spoke to a customer sales representative on the phone, who  
 15 confirmed to him in both English and Spanish that the onsite service contract indeed provided  
 16 for next business day onsite service. In reliance on Dell's representations – both on its website  
 17 and over the telephone – that his onsite service would occur on the "next business day," Plaintiff  
 18 Reyes purchased three years of onsite service from Dell.

19 78. After purchasing his computer and onsite service contract, Plaintiff Reyes  
 20 experienced many problems with his Dell computer, and was forced to utilize his onsite service  
 21 contract on many occasions. Not once did he receive onsite service on the next business day  
 22 after his initial call to Dell for service. Quite the contrary, Defendants typically provided onsite  
 23 service several days or weeks after Plaintiff's initial call to Dell for help.

24 **CLASS ACTION ALLEGATIONS**

25 79. Plaintiffs bring this action on behalf of themselves and all others similarly  
 26 situated as representatives of the following Class:

27 All individual consumers in California and Arizona who purchased a Dell  
 28 notebook or desktop computer with an at-home service contract directly from Dell  
 during the period from January 1, 2000 through July 31, 2010 (the "Class").

1           80. Excluded from the Class are the following: (a) Defendants, their employees, their  
 2 employees' immediate family members, and agents; (b) retailers, wholesalers, and other  
 3 individuals or entities that purchased Dell notebook and desktop computers for resale; (c) any  
 4 businesses or entities that purchased Dell notebook and desktop computers; (d) individuals who  
 5 did not purchase their computers primarily for personal, family, or household purposes; and (e)  
 6 any judge to whom any of Plaintiffs' cases against any of the Defendants are or were assigned  
 7 and the judge's immediate family members.

8           81. This action has been brought and may properly be maintained as a class action,  
 9 satisfying the numerosity, commonality, typicality, adequacy, and superiority requirements of  
 10 Rule 23 of the Federal Rules of Civil Procedure.

11           82. Members of the Class are so numerous that joinder of all members is  
 12 impracticable. The Class members number in the millions.

13           83. There are questions of fact and law common to the Class which common  
 14 questions predominate over any questions affecting only individual members. Those common  
 15 questions include whether Defendants engaged in the following conduct and whether such  
 16 conduct is improper and wrongful:

17           A. Charging Plaintiffs and plaintiff Class members for onsite warranty repair  
 18 service through the undisclosed sale of a service contract without their  
 19 knowledge or consent.

20           B. Failing to clearly and conspicuously disclose to Plaintiffs and plaintiff  
 21 Class members prior to, at the time of, and after the purchase of their Dell  
 22 computers that they were being charged for the cost of their first year  
 23 onsite warranty repair service through the undisclosed sale of a service  
 24 contract.

25           C. Failing to clearly and conspicuously disclose to Plaintiffs and plaintiff  
 26 Class members prior to, at the time of, and after the purchase of their Dell  
 27 computers that they had the option not to incur the cost of their first year  
 28 onsite warranty repair service and service contract.

D. Failing to provide at-home computer repair services to Plaintiffs and plaintiff Class members on the next business day after their initial call to Dell for service.

E. Failing to clearly and conspicuously disclose to Plaintiffs and plaintiff Class members Defendants' policy of gauging the timing of onsite service visits from the date Dell decides, in its sole discretion, that onsite service should take place.

F. Failing to clearly and conspicuously disclose to Plaintiffs and plaintiff Class members that Defendants do not, as a business practice, gauge the timing of onsite service visits from the date the customer first reports the need for service.

G. Carrying out schemes designed to deliberately cheat large numbers of persons out of individually small sums of money.

84. The claims of Plaintiffs are typical of the claims of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct.

85. Plaintiffs will fairly and adequately represent and protect the interests of the Class. They have no interests that conflict with or are antagonistic to the interests of the Class. Plaintiffs have retained experienced and competent attorneys who are experienced in class action litigation and who will fairly and adequately protect the interests of the Class.

86. All Class members have the same legal rights to, and interest in, the subject matter of this action, which are substantially similar, if not identical, for Plaintiffs and plaintiff Class members.

87. The class action is an appropriate method for fair and efficient adjudication of the controversy given the following:

A. Common questions of law and/or fact predominate over any individual questions that may arise, such that there would be enormous economies to the courts and the parties in litigating the common issues on a classwide, instead of a repetitive individual, basis;

1 B. Class members' individual damage claims are too small to make  
2 individual litigation an economically viable alternative;

3 C. Despite the relatively small size of individual Class members' claims,  
4 their aggregate volume, coupled with the economies of scale inherent in  
5 litigating similar claims on a common basis, will enable this case to be  
6 litigated as a class action on a cost-effective basis, especially when  
7 compared with repetitive individual litigation; and

8 D. No unusual difficulties are likely to be encountered in the management of  
9 this class action in that all or substantially all questions of law and fact to  
10 be litigated are common to the Class.

11 88. Class certification is fair and efficient as well because prosecution of separate  
12 actions would create a risk of adjudications with respect to individual members of the Class,  
13 which as a practical matter, may be dispositive of the interests of others members not parties to  
14 the adjudication or substantially impair or impede their ability to protect their interests. In  
15 addition, Defendants have acted or refused to act on grounds generally applicable to all members  
16 of the Class, thereby making final injunctive relief concerning the Class as a whole appropriate.

17 **FIRST CAUSE OF ACTION**

18 **FOR VIOLATION OF THE SONG-BEVERLY CONSUMER**

19 **WARRANTY ACT, CALIFORNIA CIVIL CODE §§ 1790, *et seq.***

20 89. Plaintiffs reallege and incorporate by reference all preceding and subsequent  
21 paragraphs into this claim for relief with the same force and effect as though those paragraphs  
22 were set forth at length herein. This claim is brought on behalf of California Class members.

23 90. Every service contract sold to a consumer in California for services to be  
24 rendered in this State is controlled and governed by the Song-Beverly Consumer Warranty Act,  
25 California Civil Code §§ 1790, *et seq.*, including § 1794.41(a). Any waiver of a buyer of a  
26 service contract of consumer goods falling under this Act is contrary to public policy and is  
27 unenforceable and void under California Civil Code § 1790.1.

28 91. Plaintiffs and plaintiff Class members are "buyers," and the computers in issue



are “consumer goods” and “home electronic products” as these terms are defined under California Civil Code § 1791. At all times herein alleged, Dell was a “manufacturer” and each Defendant was a “retail seller,” “seller” and/or “retailer” as those terms are defined in California Civil Code § 1791. The onsite service repair contracts at issue are “service contracts” as defined in California Civil Code § 1791, as well as a “service contract covering a home electronic product” as those terms are used in California Civil Code § 1794.41. Further, pursuant to section 9855 of the California Business and Professions Code, each of the Defendants is a “service contract seller or seller” and “service contractor” as those terms are defined in subsections c and e, and the onsite service repair contracts at issue are “service contracts” as defined in section 9855(a). As a result, the provisions of sections 1794.4 and 1794.41 of the Song-Beverly Consumer Warranty Act also apply to Defendants pursuant to Business and Professions Code § 9855.5.

92. In doing the acts alleged above, Defendants have carried out a scheme designed to deliberately cheat large numbers of consumers out of individually small sums of money. In furtherance of this scheme, Defendants breached section 1794.41(a)(1) of the Song-Beverly Consumer Warranty Act by, among other things, failing to comply with the requirements and disclosures of subsection (a) of section 1794.4 in failing to fully and conspicuously disclose the charges for the onsite repair service and service contract in issue, and that this onsite service and service contract were optional. In addition, Defendants violated section 1794.4(c)(5)(I) by failing to accurately and completely disclose all “fees, charges, and other costs that the buyer must pay to obtain service.”

93. At all times relevant hereto, each of the Defendants has been or is the agent, partner and/or joint venturer of each other Defendant with respect to the making, marketing and selling of the service contracts, including the extended service contracts, as well as the servicing, repairing and replacing of computer parts and components under the service contracts. Each Defendant derived, accepted and retained monetary profits and benefits resulting from the sale of the service contracts. Further, each of the Defendants acted for and on behalf of each other Defendant with actual and apparent authority to act, and did so within the course and scope of

1 their agency, partnership, joint venture and/or authority. With regard to the specific warranties  
 2 alleged herein, each warranty was made with the knowledge, consent, authorization, ratification  
 3 and approval of each of the Defendants.

4 94. Defendants made an “express warranty” as defined by section 1791.2 of the Act  
 5 in connection with the sale of consumer goods to Plaintiffs and plaintiff Class members.

6 95. Defendants breached their express warranties to Plaintiffs and plaintiff Class  
 7 members by failing to comply with their obligations under the express warranties by charging  
 8 Plaintiffs and plaintiff Class members for onsite warranty repair service through the undisclosed  
 9 sale of a service contract without their knowledge or consent, and by failing to provide next  
 10 business day at-home service on the next business day after Plaintiffs and plaintiff Class  
 11 members’ initial calls to Dell requesting service.

12 96. Further, Defendants breached the Act by, among other things, failing to comply  
 13 with the requirements and disclosures of subsections (a)(1) and (a)(2) of section 1793.1, and by  
 14 failing to maintain their own or independent service and repair facilities in California pursuant to  
 15 section 1793.2.

16 97. Plaintiffs and Class members have been damaged by Defendants’ failure to  
 17 comply with their obligations under the Song-Beverly Consumer Warranty Act with respect to  
 18 their service contracts.

19 98. As a proximate result of Defendants’ actions, Plaintiffs and members of the  
 20 plaintiff Class have suffered substantial monetary and non-monetary damage and are entitled to  
 21 injunctive relief to stop the offensive practices in issue as well as damages for all monies  
 22 unknowingly paid for the onsite repair service, plus all applicable civil penalties and attorneys’  
 23 fees and costs pursuant to Civil Code § 1794.

## 24 **SECOND CAUSE OF ACTION**

### 25 **FOR VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT,**

### 26 **CALIFORNIA CIVIL CODE §§ 1750, *et seq.***

27 99. Plaintiffs reallege and incorporate by reference all preceding and subsequent  
 28 paragraphs into this claim for relief with the same force and effect as though those paragraphs

1 were set forth at length herein. This claim is brought on behalf of California Class members.

2 100. This cause of action is brought on behalf of Plaintiffs and Class members  
 3 pursuant to the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.* (the  
 4 “CLRA”). The CLRA applies to Defendants’ actions and conduct described herein. Any waiver  
 5 by Plaintiffs and Class members of the provisions of the CLRA is contrary to public policy and  
 6 is unenforceable and void under Civil Code § 1751.

7 101. Plaintiffs and Class members bought Dell computers primarily for personal,  
 8 family, or household use and are thus “consumers” within the meaning of California Civil Code  
 9 § 1761(d). The computers that Plaintiffs and each member of the plaintiff Class bought are  
 10 “goods” within the meaning of California Civil Code § 1761(a), and the onsite repair service and  
 11 service contract in issue is a “service” within the meaning of California Civil Code § 1761(b).  
 12 This matter, involving the purchase of Dell computers and the unknowing purchase of service  
 13 contracts, constitutes a “transaction” within the meaning of California Civil Code § 1761(e).

14 102. In doing the acts alleged herein, Defendants have carried out a scheme designed  
 15 to deliberately cheat large numbers of consumers out of individually small sums of money. In  
 16 furtherance of this scheme, Defendants engaged in a number of proscribed practices under  
 17 section 1770 of the CLRA, namely sections 1770(a)(5), (9), (14) and (15). These provisions  
 18 proscribe as follows:

- 19 (a) The following unfair methods of competition and unfair or deceptive acts  
 20 or practices undertaken by any person in a transaction intended to result or  
 21 which results in the sale or lease of goods or services to any consumer are  
 22 unlawful:
- 23 (5) Representing that goods or services have ... characteristics, ... [or]  
 24 benefits ... which they do not have ...
  - 25 (9) Advertising goods or services with intent not to sell them as  
 26 advertised...
  - 27 (14) Representing that a transaction confers or involves rights,  
 28 remedies, or obligations which it does not have or involve, or  
 which are prohibited by law...
  - (15) Representing that a part, replacement, or repair service is needed  
 when it is not.

1           103. Defendants' material omissions in failing to disclose their charges to Plaintiffs  
2 and Class members for their first year onsite service and service contract, and their failure to  
3 disclose the customers' option not to have the onsite service and service contract in the first  
4 place, as more fully alleged above, constitute a violation of the CLRA and breach of the  
5 proscribed practices described above. Further, these acts were likely to mislead the members of  
6 the public and reasonable consumers, including Plaintiffs and plaintiff Class members, and did  
7 mislead members of the public and reasonable consumers, including Plaintiffs and plaintiff Class  
8 members.

9           104. Defendants' representations and advertising of their onsite service contracts as  
10 providing "next business day" at-home computer repair service, as more fully alleged above,  
11 also constituted a violation of the CLRA and breach of the proscribed practices described above.  
12 Further, these acts were likely to mislead the members of the public and reasonable consumers,  
13 including Plaintiffs and plaintiff Class members, and did mislead members of the public and  
14 reasonable consumers, including Plaintiffs and plaintiff Class members.

15           105. Plaintiffs and Class members request that this Court enjoin Defendants from  
16 continuing to employ the unlawful methods, acts and practices alleged above, pursuant to  
17 California Civil Code § 1780(a)(2). Unless Defendants are permanently enjoined from  
18 continuing to engage in these violations of the CLRA, current and future consumers of  
19 Defendants' products will be affected in the same way as have Plaintiffs and members of the  
20 Class.

21           106. Further, as a direct and proximate result of the above-described deceptive  
22 practices, Plaintiffs and Class members have sustained damages in an amount to be proven at  
23 trial.

24           107. Defendants' deceptive practices were also directed to Class members who are  
25 senior citizens and disabled persons, as defined in California Civil Code § 1761(f) and (g), who  
26 are substantially more vulnerable to Defendants' conduct than other members of the public and  
27 who actually suffered economic damage resulting from Defendants' conduct, and are therefore  
28 entitled to additional statutory damages pursuant to California Civil Code § 1780(b).

108. As a further result of Defendants' conduct alleged above, and because Defendants are guilty of fraud, malice, and/or oppression, Plaintiffs and Class members are entitled not only to damages as set forth above, but also to exemplary and punitive damages in a sum not presently known, but sufficient for the sake of example and by way of deterring Defendants and others from further such actions.

109. On August 23, 2006, Plaintiffs Robert Dean and Raul Reyes' counsel provided Defendants with written notice of their and the Class's claims, and on April 7, 2009, Plaintiffs Vivian Fiori Ariza and Roggie Trujillo provided Defendants with written notices of their claims and the Class's claims. These notices were sent via U.S. certified mail, return receipt requested, and demanded that, within 30 days, Defendants correct, repair, replace or otherwise rectify the deceptive practices complained of herein for the entire Class pursuant to California Civil Code § 1770. Defendants failed to do so or agree to do so. Therefore, Plaintiffs now seek damages for such deceptive practices pursuant to California Civil Code section 1782.

### **THIRD CAUSE OF ACTION**

#### **FOR FALSE AND MISLEADING ADVERTISING IN VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17500, *et seq.***

110. Plaintiffs reallege and incorporate by reference all preceding and subsequent paragraphs into this claim for relief with the same force and effect as though those paragraphs were set forth at length herein. This claim is brought on behalf of California Class members.

111. Dell computers are broadly advertised to California consumers through various media, including through Dell's website, mail order catalogs, newspapers, television and the Internet. Defendants, with full knowledge that there is a charge for first year onsite service repair and that this service is optional, intentionally and deceptively misled consumers, including Plaintiffs and Class members, into believing that there was no charge for first year onsite service through their advertising and statements, including their invoices and service contracts. The advertising and statements fail to disclose all material and relevant information, namely, that there was a charge for the onsite service for the first year of ownership, and that this onsite service, which is sold through a service contract, was optional.

1           112. Defendants also intentionally and deceptively misled consumers, including  
2 Plaintiffs and Class members, into believing that they would receive at-home computer repair  
3 service on the next business day after they first requested technical computer service. The  
4 advertising and statements fail to disclose all material and relevant information, namely, that  
5 Defendants' next business day onsite service contracts did not entitle customers to at-home  
6 computer repair service on the next business day after a customer's request for service, and that  
7 rather, Defendants gauged the timeliness of at-home service from the day that Dell decided, in its  
8 sole discretion, that at-home service would be dispatched.

9           113. Defendants' advertisements and statements were likely to deceive or mislead or  
10 had the capacity, likelihood or tendency to deceive or confuse the consuming public, including  
11 Plaintiffs and Class members. As a result, Defendants' acts and conduct in making and  
12 disseminating the advertising and statements before the public in California were false and  
13 misleading within the meaning, and in violation, of California Business & Professions Code §  
14 17500.

15           114. In making and disseminating the statements alleged herein, Defendants knew or  
16 should have known that the statements were untrue or misleading, and acted in violation of  
17 California Business & Professions Code §§ 17500, *et seq.*

18           115. The misrepresentation and non-disclosure by Defendants of the material facts  
19 detailed above constitutes false and misleading advertising and therefore constitutes a violation  
20 of California Business & Professions Code §§ 17500, *et seq.*

21           116. Further, to the extent it is found that Defendants conditioned the sale of their  
22 computers with the sale of a service contract, Defendants are in breach of California Business &  
23 Professions Code § 17509(a) for failing to clearly and conspicuously disclose and list the price  
24 for the onsite service contract separate and apart from the price of the computer in their  
25 advertising and statements when soliciting purchasers for Dell computers.

26           117. In doing the acts alleged above, Defendants have carried out a scheme designed to  
27 deliberately cheat large numbers of consumers out of individually small sums of money. As a  
28 proximate result of Defendants' actions, Plaintiffs and members of the Class are entitled to

injunctive relief, restitution of all moneys wrongfully obtained from Plaintiffs and members of the Class, and disgorgement.

#### **FOURTH CAUSE OF ACTION**

#### **FOR UNFAIR, DECEPTIVE, AND UNLAWFUL BUSINESS PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, *et seq.***

118. Plaintiffs reallege and incorporate by reference all preceding and subsequent paragraphs into this claim for relief with the same force and effect as though those paragraphs were set forth at length herein. This claim is brought on behalf of California Class members.

119. Defendants' actions alleged above, including their failing to disclose the onsite service contract charge or that the onsite service was optional for the first year, and their misrepresenting the nature of their next business day onsite service contracts, constitute unlawful, unfair, and fraudulent business practices and acts under California Business and Professions Code §§ 17200, *et seq.* These actions and business practices are forbidden by law, create harm that outweighs any benefit to customers, and are likely to deceive members of the public.

120. In doing the acts alleged above, Defendants have carried out a scheme designed to deliberately cheat large numbers of consumers out of individually small sums of money.

121. Plaintiffs have suffered injury in fact and have lost money in at least the amount they paid for their first year or next business day service contracts, as a result of Defendants' unfair competition and deceptive advertising as defined in Business and Professions Code §§ 17200, *et seq.*

122. In addition, the acts and practices of Defendants are unlawful because they violate one or more of the following statutes and regulations:

- a) California Business and Professions Code §§ 17500, *et seq.*, and § 9855.5.  
as set forth above.
- b) Consumers Legal Remedies Act, Cal. Civil Code §§ 1750, *et seq.*, as set forth above.
- c) Song-Beverly Consumer Warranty Act, Cal. Civil Code §§ 1790, *et seq.*,

as set forth above.

d) 16 C.C.R. § 2720 of the California Administrative Code, which provides that “[n]o service dealer shall, in filling out an estimate or an invoice, withhold therefrom or insert therein any statement or information where the tendency or effect thereby is to mislead or deceive customers, prospective customers, or the consuming public.”

123. Defendants’ acts and practices as described herein have deceived and/or are likely to deceive members of the consuming public and reasonable consumers, including Plaintiffs and Class members.

124. Unless Defendants are enjoined from continuing to engage in the unlawful, unfair, fraudulent, untrue and deceptive acts and practices described herein, Plaintiffs and members of the Class will continue to be damaged by Defendants’ unfair business practices.

125. Defendants, through their acts of unfair competition and unfair, deceptive, untrue and misleading advertising, have acquired money from Plaintiffs and Class members. Thus, Plaintiffs and plaintiff Class members request that this Court restore this money to them, enjoin Defendants from continuing to violate California Business & Professions Code §§ 17200, *et seq.*, and order disgorgement.

### **FIFTH CAUSE OF ACTION**

### **FOR CONSUMER FRAUD IN VIOLATION OF THE**

### **ARIZONA CONSUMER FRAUD ACT**

126. Plaintiffs reallege and incorporate by reference all preceding and subsequent paragraphs into this claim for relief with the same force and effect as though those paragraphs were set forth at length herein. This claim is brought on behalf of Arizona Class members.

127. In doing the acts alleged above, Defendants have carried out a scheme designed to deliberately cheat large numbers of consumers out of individually small sums of money.

128. Defendants’ actions, as set forth above, constitute consumer fraud in violation of applicable law, including Arizona Revised Statutes §§ 44-1521, *et seq.*, which provides in A.R.S. § 44-1522 in relevant part that “[t]he act, use, or employment by any person of any deception,



1 deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment,  
 2 suppression or omission of any material fact with intent that others rely upon such concealment,  
 3 suppression or omission, in connection with the sale or advertisement of any merchandise  
 4 whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to  
 5 be an unlawful practice.”

6 129. As a result of Defendants’ conduct set forth above, Plaintiffs and members of the  
 7 plaintiff Class reasonably relied upon Defendants’ common material omissions and  
 8 misrepresentations in purchasing their first year onsite service contracts and/or next business day  
 9 service contracts, and have suffered damages.

10 130. The foregoing conduct of Defendants (i) constituted the intentional  
 11 misrepresentation, deceit, and/or concealment of a material fact known to the Defendants with  
 12 the intention on the part of Defendants of thereby depriving Plaintiffs and plaintiff Class  
 13 members of property or legal rights or otherwise causing Plaintiffs and plaintiff Class members  
 14 injury; (ii) was intended by Defendants to cause injury to Plaintiffs and plaintiff Class members  
 15 or was wanton and malicious conduct that was carried on by Defendants with ill-will and a  
 16 willful and reckless disregard of the rights or safety of others; and/or (iii) was aggravated  
 17 conduct that subjected Plaintiffs and plaintiff Class members to cruel and unjust hardship in  
 18 conscious disregard of Plaintiffs and plaintiff Class members’ rights so as to justify an award of  
 19 punitive damages against Defendants.

## 20 **SIXTH CAUSE OF ACTION**

### 21 **FOR BREACH OF WRITTEN AGREEMENT**

22 131. Plaintiffs reallege and incorporate by reference all preceding and subsequent  
 23 paragraphs into this claim for relief with the same force and effect as though those paragraphs  
 24 were set forth at length herein. This claim is brought on behalf of all Class members.

25 132. At all times relevant hereto, each of the Defendants has been or is the agent,  
 26 partner and/or joint venturer of each other Defendant with respect to the making, drafting,  
 27 marketing and selling of the invoices and service contracts. Each Defendant derived, accepted  
 28 and retained monetary profits and benefits resulting from the sale of the service contracts. With

1 respect to the specific agreements alleged herein, each of these Defendants acted for and on  
2 behalf of each other Defendant with actual and apparent authority to act, and did so within the  
3 course and scope of their agency, partnership, joint venture and/or authority. Further, with  
4 regard to the specific agreements alleged herein, each agreement was made with the knowledge,  
5 consent, authorization, ratification and approval of each of the Defendants.

6 133. At the time of the computer purchases alleged herein, and as part of those  
7 purchases, Dell, on behalf of itself and the Defendants, offered, promised and agreed to the  
8 following uniform material terms with respect to their onsite service contracts: Defendants will  
9 provide onsite warranty service and parts for the first year for no additional consideration, and  
10 Defendants will provide “next business day” onsite service.

11 134. Plaintiffs and plaintiff Class members accepted the terms of the agreement by  
12 purchasing their computers and service contracts. Defendants uniformly offered the same terms  
13 and written documentation to each customer, including Plaintiffs and plaintiff Class members.  
14 Plaintiffs and plaintiff Class members did not and could not negotiate any term of the  
15 agreements, and had no bargaining power over their terms as they were strictly dictated by  
16 Defendants.

17 135. Plaintiffs and plaintiff Class members fulfilled all of their obligations under the  
18 invoices and written agreements, including all conditions, covenants, and promises, except those  
19 that were excused as a result of Defendants’ breach of their obligations thereunder.

20 136. Defendants breached the agreements by secretly charging Plaintiffs and plaintiff  
21 Class members for their first year onsite warranty services, and failing to provide onsite service  
22 on the next business day after a customer’s initial call to Dell requesting technical computer  
23 service.

24 137. As a proximate result of Defendants’ breaches, Plaintiffs and plaintiff Class  
25 members have been damaged in an amount to be proven at trial.

26 **SEVENTH CAUSE OF ACTION**

27 **FOR FRAUD**

28 138. Plaintiffs reallege and incorporate by reference all preceding and subsequent

1 paragraphs into this claim for relief with the same force and effect as though those paragraphs  
2 were set forth at length herein. This claim is brought on behalf of all Class members.

3 139. At all times relevant hereto, Defendants have been or are the agents, partners  
4 and/or joint venturers of each other with respect to the representations attributed to them with  
5 regard to the service contracts, and each acted for and on behalf of each other with actual and  
6 apparent authority to act, and did so within the course and scope of their partnership, joint  
7 venture, agency and/or authority. With respect to the specific representations attributed to them  
8 regarding the service contracts, each representation was made with the knowledge, consent,  
9 authorization, ratification and approval of each of them. Further, these Defendants derived,  
10 accepted and retained monetary profits and benefits resulting from the transactions in which the  
11 representations were made.

12 140. Defendants made the following material representations to Plaintiffs and plaintiff  
13 Class members in writing:

- 14 A. That there was no additional consideration required for next business day  
15 onsite warranty service and parts for the first year of the warranty period.  
16 B. That Defendants would provide next business day onsite service under its  
17 at-home service contracts.

18 141. Defendants made substantially the same representations to Plaintiffs and to each  
19 plaintiff Class member prior to, at, or around the time they purchased their computers and  
20 received their service contracts.

21 142. All of the foregoing representations were false. In truth, Defendants secretly  
22 charged Plaintiffs and plaintiff Class members for their first year onsite warranty service, and  
23 Defendants' next business day onsite service contracts did not entitle customers to at-home  
24 computer repair service on the next business day after a customer's request for service.

25 143. At the time these representations were made, Defendants, and each of them, knew  
26 them to be false. Defendants, and each of them, made these representations with the intention to  
27 deceive and defraud Plaintiffs and plaintiff Class members, and to induce them to act in reliance  
28 on these representations by purchasing their computers and service contracts.

1           144. Plaintiffs and plaintiff Class members were ignorant of the falsity of Defendants'  
2 representations at the time they were made and at the time Plaintiffs and plaintiff Class members  
3 purchased their computers and service contracts, and believed them to be true. In reasonable  
4 reliance on these representations, Plaintiffs and plaintiff Class members were induced to and did  
5 purchase the computers and service contracts to their detriment. Had Plaintiffs and plaintiff  
6 Class members known the true facts, they would not have taken such action. Plaintiffs and  
7 plaintiff Class members' reliance on Defendants' representations was justified because  
8 Defendants were the ones offering the service contracts for sale, and possessed superior  
9 knowledge of the facts, as they were peculiarly within the knowledge of Defendants.

10           145. Defendants made substantially these same material representations to all plaintiff  
11 Class members who received a service contract.

12           146. As a result of Defendants' fraudulent conduct as alleged above, Plaintiffs and  
13 plaintiff Class members have suffered damages.

14           147. The foregoing conduct of Defendants (i) constituted an intentional  
15 misrepresentation, deceit, and/or concealment of a material fact known to the Defendants with  
16 the intention on the part of Defendants of thereby depriving Plaintiffs and plaintiff Class  
17 members of property or legal rights or otherwise causing Plaintiffs and plaintiff Class members  
18 injury; (ii) was intended by Defendants to cause injury to Plaintiffs and plaintiff Class members  
19 or was wanton and malicious conduct that was carried on by Defendants with ill-will and a  
20 willful and reckless disregard of the rights or safety of others; and/or (iii) was aggravated  
21 conduct that subjected Plaintiffs and plaintiff Class members to cruel and unjust hardship in  
22 conscious disregard of Plaintiffs and plaintiff Class members' rights so as to justify an award of  
23 punitive damages against Defendants.

24                                   **EIGHTH CAUSE OF ACTION**

25                                   **FOR FRAUD BY NONDISCLOSURE**

26           148. Plaintiffs reallege and incorporate by reference all preceding and subsequent  
27 paragraphs into this claim for relief with the same force and effect as though those paragraphs  
28 were set forth at length herein. This claim is brought on behalf of all Class members.

1           149. Defendants intentionally failed and omitted to disclose to Plaintiffs and plaintiff  
2 Class members that they do not provide onsite warranty repair service and parts during the first  
3 year of the warranty period for no extra consideration, and that they do not, as a business  
4 practice, provide onsite service on the next business day after a customer's initial call to Dell for  
5 service. These material facts were known to Defendants, and each of them, at all times herein  
6 mentioned.

7           150. Defendants had a duty to Plaintiffs and plaintiff Class members to fully disclose  
8 in a clear and conspicuous manner the true facts.

9           151. Defendants' representations, when coupled with Defendants' omissions, were  
10 false and misleading. Defendants intentionally omitted and failed to disclose these facts to  
11 Plaintiffs and plaintiff Class members to induce and deceive Plaintiffs and plaintiff Class  
12 members into purchasing their computers and service contracts.

13           152. Plaintiffs and plaintiff Class members were ignorant of the falsity of Defendants'  
14 representations at the time they were made and at the time they purchased their computers and  
15 service contracts, and believed them to be true. In reasonable reliance on these representations,  
16 Plaintiffs and plaintiff Class members were induced to and did purchase the computers and  
17 service contracts to their detriment. Had Plaintiffs and plaintiff Class members known the true  
18 facts, they would not have taken such action. Plaintiffs and plaintiff Class members' reliance on  
19 Defendants' representations was justified because Defendants were the ones offering the service  
20 contracts for sale, and possessed superior knowledge of the facts, as they were peculiarly within  
21 the knowledge of Defendants.

22           153. These material omissions were uniformly kept from Plaintiffs and plaintiff Class  
23 members.

24           154. As a result of Defendants' fraudulent conduct as alleged above, Plaintiffs and  
25 plaintiff Class members have suffered damages.

26           155. The foregoing conduct of Defendants (i) constituted an intentional  
27 misrepresentation, deceit, and/or concealment of a material fact known to the Defendants with  
28 the intention on the part of Defendants of thereby depriving Plaintiff and plaintiff Class members

1 of property or legal rights or otherwise causing Plaintiffs and plaintiff Class members injury; (ii)  
 2 was intended by Defendants to cause injury to Plaintiffs and plaintiff Class members or was  
 3 wanton and malicious conduct that was carried on by Defendants with ill-will and a willful and  
 4 reckless disregard of the rights or safety of others; and/or (iii) was aggravated conduct that  
 5 subjected Plaintiffs and plaintiff Class members to cruel and unjust hardship in conscious  
 6 disregard of Plaintiffs and plaintiff Class members' rights so as to justify an award of punitive  
 7 damages against Defendants.

8 **PRAYER**

9 **WHEREFORE**, Plaintiffs request the following relief, on behalf of themselves and on  
 10 behalf of the Class:

- 11 1. An order confirming that this action is properly maintainable as a Class action
- 12 and appointing Plaintiffs and their counsel to represent the Class;
- 13 2. An award of damages, restitution, punitive damages, civil penalties, and all other
- 14 monetary relief authorized by law or referenced herein;
- 15 3. An order enjoining the conduct alleged herein;
- 16 4. An award of prejudgment interest and post-judgment interest;
- 17 5. An award providing for payment of costs of suit, including payment of experts'
- 18 fees and expenses;
- 19 6. An award of reasonable attorneys' fees; and
- 20 7. Such other and further relief as this Court may deem proper and just.

21 DATED: November 8, 2010

Respectfully submitted,

STRANGE & CARPENTER

24 By: /s/  
 25 Gretchen Carpenter  
 26 Attorneys for Plaintiffs

Plaintiffs hereby demand a trial by jury.

Respectfully submitted,

STRANGE &amp; CARPENTER

By: /s/  
Gretchen Carpenter  
Attorneys for Plaintiffs

# **EXHIBIT 1**



This is your **ACKNOWLEDGMENT**

Page: 1 of 2

FID Number: 74-2616805  
 Sales Rep: MICHAEL HODGKISS  
 For Sales: (800)695-8133  
 Sales Fax: (877)204-8109  
 For Customer Service: (800)695-8133  
 For Technical Support: (800)695-8133  
 Dell Online: <http://www.dell.com>

Customer Number: 034441005  
 Purchase Order: NAONLINECUST  
 Order Number: 461602352  
 Order Date: 09/05/03

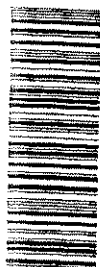
Invoice Number: **461602352**

Invoice Date: 09/12/03  
 Payment Terms: VISA  
 Shipped Via: LTL 5 DAY OR LESS  
 Waybill Number: ZZ3070050933574

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 #BWNHKKPV  
 #0344 4100 55# 00009035 1 MB 0.309 01  
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SHIP TO:  
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PLEASE REVIEW IMPORTANT TERMS &amp; CONDITIONS ON THE REVERSE SIDE OF THIS INVOICE

Order	Shipped	Item Number	Description	Unit	Unit Price	Amount
1	1	221-2530	Dimension 4600 Series, Intel Pentium 4 Processor at 2.80GHz with HT Technology	EA	1,494.00	1,494.00
1	1	311-9002	512MB DDR SDRAM at 400MHz	EA	0.00	0.00
1	1	310-1696	Dell Enhanced Multimedia PS/2 Keyboard	EA	0.00	0.00
1	1	320-0578	17 in (17 in viewable) E171FPB Flat Panel Display	EA	0.00	0.00
1	1	320-0735	128MB DDR NVidia GeForce FX 5200 graphics card	EA	0.00	0.00
1	1	340-3274	80GB 7200 RPM Ultra ATA Hard Drive	EA	0.00	0.00
1	1	340-8446	USB Memory Key, 64MB, Dimension	EA	0.00	0.00
1	1	340-8688	No Floppy Drive Requested	EA	0.00	0.00
1	1	313-7222	Dell Application Back-up CD, Factory Install	EA	0.00	0.00
1	1	420-1921	Microsoft Windows XP Home Edition, Service Pack 1, English	EA	0.00	0.00
1	1	412-0409	Generic Dimension Dell Support	EA	0.00	0.00
1	1	310-4037	Dell USB Optical Mouse	EA	0.00	0.00
1	1	430-0472	10/100/1000 Networking Card	EA	0.00	0.00
1	1	313-1313	56K PCI Data Fax Modem for Windows	EA	0.00	0.00
1	1	313-1476	48X Max Variable CD-ROM Drive, Factory Install	EA	0.00	0.00
1	1	313-2758	Integrated Audio	EA	0.00	0.00
1	1	313-2198	No Speaker Requested	EA	0.00	0.00
1	1	410-0144	Symantec Norton Antivirus 2003 CD With Documentation, Retail Version	EA	0.00	0.00
1	1	365-1234	Readyware Installation Fee	EA	0.00	0.00
1	1	412-0298	MusicMatch 7.1x Basic	EA	0.00	0.00
1	1	412-0271	Dell Picture Studio Image Expert Standard, Dimension	EA	0.00	0.00
1	1	412-0273	Dell Picture Studio Paint Shop Pro Try and Buy, Dimension	EA	0.00	0.00
1	1	420-3224	Broadband Icon for Inspiron	EA	0.00	0.00
1	1	412-0445	AOL 8.0 PUB	EA	0.00	0.00
1	1	412-0360	Real Network RealOne Player Basic, Version 6, US English	EA	0.00	0.00
1	1	412-0402	Word Perfect Office 11	EA	0.00	0.00
1	1	950-1260	*Type 3- Third Party At Home Service, 24x7 Technical Support, Initial Year	EA	0.00	0.00
1	1	950-3337	*1 Year Limited Warranty	EA	0.00	0.00
1	1	950-9797	*No Warranty, Year 2 and 3	EA	0.00	0.00
1	1	412-0360	Soft Contracts - Banctec	EA	0.00	0.00
1	1	970-1017	*NO WARRANTY COMPLETE CARE	EA	0.00	0.00
1	1	462-1662	48x/24x/48x CD-RW Drive	EA	0.00	0.00

Ship. &/or Handling	\$	0.00
Subtotal	\$	1,494.00
Taxable:	Tax	
\$ 1,494.00	\$	123.28
Invoice Total	\$	1,617.28
VISA	\$	1,617.28
	\$	
Balance Due	\$	0.00

Service contract may be subject to sales tax.  
 on-site or other service covers Dell system hardware only.  
 PLEASE KEEP ORIGINAL BOX FOR ALL RETURNS. COMPREHENSIVE ONLINE CUSTOMER CARE  
 FORMATION AND ASSISTANCE IS A CLICK AWAY AT [WWW.DELL.COM/PUBLIC-ECARE](http://WWW.DELL.COM/PUBLIC-ECARE) TO  
 ANSWER A VARIETY OF QUESTIONS REGARDING YOUR DELL ORDER.



This is your ACKNOWLEDGMENT

Page: 2 of 2

FID Number: 74-2616805  
 Sales Rep: MICHAEL HODGKISS  
 For Sales: (800)695-8133  
 Sales Fax: (877)204-8109  
 For Customer Service: (800)695-8133  
 For Technical Support: (800)695-8133  
 Dell Online: <http://www.dell.com>

Customer Number: 034441005  
 Purchase Order: NAONLINECUST  
 Order Number: 461602352  
 Order Date: 09/05/03

Invoice Number: 461602352

Invoice Date: 09/12/03  
 Payment Terms: VISA  
 Shipped Via: LTL 5 DAY OR LESS  
 Waybill Number: ZZ3070050933574

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SOLD TO:

VIVIAN FIORI  
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SHIP TO:  
 VIVIAN FIORI  
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PLEASE REVIEW IMPORTANT TERMS &amp; CONDITIONS ON THE REVERSE SIDE OF THIS INVOICE

Order	Shipped	Item Number	Description	Unit	Unit Price	Amount
1	1	460-9055	DHS Instant \$100 Off Discount(s) and/or coupons	EA	0.00	0.00
		System Service Tags	B3YNG31			

THIS IS NOT  
 AN INVOICE

## **EXHIBIT 2**

## This is your ACKNOWLEDGEMENT

Page 1 of 2

FID Number: 74-2616805  
 Sales Rep: JORGE CALDERON  
 For Sales: (800) 695-8133  
 Sales Fax: (877) 204-8109  
 Customer Service: (800) 695-8133  
 Technical Support: (800) 695-8133  
 Dell Online: <http://www.dell.com>

Customer Number: 41742381  
 Purchase Order:  
 Order Number: 694349854  
 Order Date: 03/23/04

Invoice Number: 694349854

Invoice Date: 04/09/04  
 Payment Terms: VISA  
 Shipped Via: LTL 5 DAY OR LESS  
 Waybill Number: 6AT9694214207974

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 VIVIAN FIORI

Order	Shipped	Item Number	Description	Unit	Unit Price	Amount
1	1	221-3725	Dimension 4600 Series, Intel Pentium 4 Processor at 2.6GHz	EA	770.00	770.00
1	1	462-1656	512MB DDR SDRAM at 333MHz	EA	0.00	0.00
1	1	310-1582	Dell Quiet Key Keyboard	EA	0.00	0.00
1	1	462-8471	17 in (17 in viewable) E172FPB Flat Panel Display	EA	0.00	0.00
1	1	320-2870	Integrated Intel Extreme Graphics 2	EA	0.00	0.00
1	1	341-0834	80GB 7200 RPM Ultra ATA Hard Drive	EA	0.00	0.00
1	1	341-0217	USB Memory Key, 84MB	EA	0.00	0.00
1	1	340-8688	No Floppy Drive Requested	EA	0.00	0.00
1	1	313-7222	Dell Application Back-up CD, Factory Install	EA	0.00	0.00
1	1	420-1921	Microsoft Windows XP Home Edition, Service Pack 1, English	EA	0.00	0.00
1	1	412-0409	Generic Dimension Dell Support	EA	0.00	0.00
1	1	310-4037	Dell USB Optical Mouse	EA	0.00	0.00
1	1	430-0472	10/100/1000 Networking Card	EA	0.00	0.00
1	1	313-2279	56K PCI Data Fax Modem	EA	0.00	0.00
1	1	462-6817	48X Max CD-RW Drive	EA	0.00	0.00
1	1	313-0917	16X DVD-Rom Drive	EA	0.00	0.00
1	1	430-0594	Cyberlink Software Decoding for DVD Drives	EA	0.00	0.00
1	1	462-7810	Info, 16X DVD ROM and 48X CDRW	EA	0.00	0.00
1	1	313-1932	SoundBlaster Live! with 5.1 Support	EA	0.00	0.00
1	1	313-6010	Factory Installed Audio	EA	0.00	0.00
1	1	313-2201	AS500 Sound Bar Speaker with Power Adapter for E152, E172FP Flat Panel Display	EA	0.00	0.00
1	1	365-1234	Readyware Installation Fee	EA	0.00	0.00
1	1	410-0632	Symantec Norton Antivirus 2004 CD With Documentation, Retail Version, Factory Installed	EA	0.00	0.00
1	1	412-0516	Dell Jukebox powered by Music Match	EA	0.00	0.00

PLEASE KEEP ORIGINAL BOX FOR ALL RETURNS. COMPREHENSIVE ONLINE CUSTOMER CARE INFORMATION AND ASSISTANCE IS A CLICK AWAY AT [WWW.DELL.COM/PUBLIC-ECARE](http://WWW.DELL.COM/PUBLIC-ECARE) TO ANSWER A VARIETY OF QUESTIONS REGARDING YOUR DELL ORDER.

Ship. &/or Handling	\$	90.00
Subtotal	\$	860.00
Taxable:	Tax	
\$ 860.00	\$	62.33
Invoice Total	\$	922.33
VISA	\$	922.33
	\$	
Balance	\$	0.00

## This is your ACKNOWLEDGEMENT

Page 2 of 2

FID Number: 74-2616805  
 Sales Rep: JORGE CALDERON  
 For Sales: (800) 695-8133  
 Sales Fax: (877) 204-8109  
 Customer Service: (800) 695-8133  
 Technical Support: (800) 695-8133  
 Dell Online: <http://www.dell.com>

Customer Number: 41742381  
 Purchase Order:  
 Order Number: 694349854  
 Order Date: 03/23/04

Invoice Number: 694349854  
 Invoice Date: 04/09/04  
 Payment Terms: VISA  
 Shipped Via: LTL 5 DAY OR LESS  
 Waybill Number: 6AT9694214207974

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SOLD TO:  
 VIVIAN FIORI  
 VIVIAN FIORI

SHIP TO:  
 VIVIAN FIORI  
 VIVIAN FIORI

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Order	Shipped	Item Number	Description	Unit	Unit Price	Amount
1	1	412-0621	Dell Photo Album Standard	EA	0.00	0.00
1	1	420-3224	Broadband Icon for Inspiron	EA	0.00	0.00
1	1	412-0625	Dell/My Way Home Page	EA	0.00	0.00
1	1	412-0590	AOL 9.0 EPP	EA	0.00	0.00
1	1	412-0380	Real Network RealOne Player Basic, Version 8, US English	EA	0.00	0.00
1	1	412-0395	Word Perfect Productivity Pack	EA	0.00	0.00
1	1	412-0551	Money 2004 Standard Version for Dimension	EA	0.00	0.00
1	1	412-0555	Microsoft Encyclopedia, 2004 for Dimension	EA	0.00	0.00
1	1	950-1260	*Type 3- Thrd Party At Home Service, 24x7 Technical Support, Initial Year	EA	0.00	0.00
1	1	950-3337	*1 Year Limited Warranty	EA	0.00	0.00
1	1	950-9797	*No Warranty, Year 2 and 3	EA	0.00	0.00
1	1	412-0360	Soft Contracts - BancTec	EA	0.00	0.00
1	1	420-4125	Turbo Tax 2003	EA	0.00	0.00
1	1	412-0518	Dell Media Experience	EA	0.00	0.00
1	1	462-1590	DHS Instant \$150 Off	EA	0.00	0.00
		System Service Tags	9WNRN41	EA	0.00	0.00

## **EXHIBIT 3**

FID Number: 74-2683839  
 Sales Rep: ANDREA BIRD  
 For Sales: (800)474-3355  
 Sales Fax: (800)317-3355  
 Customer Service: (800)624-9897  
 Technical Support: (800)624-9896  
 Dell Online: <http://www.dell.com>

Customer Number: 010563207  
 Purchase Order:  
 Order Date: 08/31/00  
 19 01 M 01 01 N

Invoice Number: **425431269**  
 Invoice Date: 09/01/00  
 Payment Terms: MASTER CARD  
 Shipped Via: UNAUTHORIZED  
 Waybill Number: E3W5554211712418

**SOLD TO:**

39.1.12804 1 AB 0.270 73288S11.OCE 1 of 2  
 PAM NEWPORT  
 NEWPORT PAM

**SHIP TO:**

PAM NEWPORT  
 NEWPORT PAM



PLEASE SEE IMPORTANT TERMS &amp; CONDITIONS ON THE REVERSE SIDE OF THIS INVOICE

QTY	Shipped	Item Number	Description	Unit	Unit Price	Amount
1	1	220-7469	Dimension 4100 Series,Pentium III Processor at 800 MHz	EA	1,517.00	1,517.00
1	1	310-0801	Microsoft Internet Keyboard Dell Edition,Factory Install	EA	0.00	0.00
1	1	310-3180	Dell Mouse Pad, included in your order. Thank you for choosing Dell.	EA	0.00	0.00
1	1	310-8124	Microsoft Intellimouse, Factory Install	EA	0.00	0.00
1	1	310-8890	MicroSoft Millenium Upgrade Coupon,Factory Install	EA	0.00	0.00
1	1	310-8921	EducateU Information/TechSheet,English,Dimension,Used for EducateU WEB Based Training	EA	0.00	0.00
1	1	311-7001	128MB SDRAM at 133MHz,Factory Install	EA	0.00	0.00
1	1	313-0504	8x4x32x CD-RW, Factory Install	EA	0.00	0.00
1	1	313-3925	harman/kardon HK Speakers Factory Install	EA	0.00	0.00
1	1	313-6170	Soundblaster 64V PCI Sound Card,Factory Install	EA	0.00	0.00
1	1	313-8626	Conexant V.90/56K Telephony Modem for Windows Factory Install	EA	0.00	0.00

ice contract may be subject to sales tax.

on-site or other service covers Dell system hardware only.

CATALOG SALES COLLECTS TAX IN FL,KY,NC,NV,TN & TX.FOR OTHER STATES THE TAX  
 WN RELATES ONLY TO 3RD PARTY SERVICE CONTRACTS AND THE BUYER IS RESPONSIBLE  
 REMITTING ANY ADDITIONAL TAX DIRECTLY TO THE TAXING AUTHORITIES.



Invoice Number: 425431269  
 Customer Number: 010563207  
 Purchase Order:  
 Associated Order: 425431277

Ship. &/or Handling	\$	95.00
Subtotal	\$	1,612.00
Taxable:	Tax:	
\$ 233.00	\$	16.31
Total	\$	1,628.31
MASTER CARD	\$	1,628.31
	\$	
	\$	
Balance	\$	0.00

FID Number: 74-2683839  
 Sales Rep: ANDREA BIRD  
 For Sales: (800)474-3355  
 Sales Fax: (800)317-3355  
 Customer Service: (800)624-9897  
 Technical Support: (800)624-9896  
 Dell Online: <http://www.dell.com>

Customer Number: 010563207  
 Purchase Order:  
 Order Date: 08/31/00  
 19 01 M 01 01 N

Invoice Number: **425431269**

Invoice Date: 09/01/00  
 Payment Terms: MASTER CARD  
 Shipped Via: UNAUTHORIZED  
 Waybill Number: E3W5554211712418

**SOLD TO:**

39,1.12804 1 AB 0.270 73288\$11.OCE 2 of 2  
 PAM NEWPORT  
 NEWPORT PAM

**SHIP TO:**

PAM NEWPORT  
 NEWPORT PAM

PLEASE SEE IMPORTANT TERMS & CONDITIONS ON THE REVERSE SIDE OF THIS INVOICE

Shipped	Item Number	Description	Unit	Unit Price	Amount
1	320-6888	17"(16.0 Viewable,,26dp) M781, Factory Install	EA	0.00	0.00
1	320-7211	16MB ATI Rage 128 Pro,Factory Install	EA	0.00	0.00
1	340-2409	3.5",Floppy Drive,Factory Install	EA	0.00	0.00
1	340-9909	20.4GB 7200 RPM Ultra ATA Hard Drive,Factory Install	EA	0.00	0.00
1	412-5430	Software,Music Match 5.10, Original Equipment Manufacturer,United States, Factory Install	EA	0.00	0.00
1	412-5620	Norton Antivirus 2000, version 5.0 with CD & Documentation, English,Factory Install	EA	0.00	0.00
1	412-5933	Spire 2.0,No Media,OEM,English	EA	0.00	0.00
1	420-0300	Windows 98 Second Edition,Factory Install	EA	0.00	0.00
1	430-0591	No Network Card Requested, Dell Dimension	EA	0.00	0.00
1	460-8057	AOL 5.0 Yearly Prepaid ISP, Factory Install	EA	0.00	0.00
1	460-8320	No Zip Drive Requested	EA	0.00	0.00
1	900-1600	*Type 3 Contract - Next Business Day Parts & Labor On-Site Response Initial Year	EA	0.00	0.00
1	900-1602	*Type 3 Contract - Next Business Day Parts & Labor On-Site Response 2YR Extended	EA	0.00	0.00
1	412-2736	MS Works Suite 2000 Standard, CD & Documentation,US English, Factory Install	EA	0.00	0.00
System Service Tags HQHC101					